



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0135]

RIN 1625-AA00

Safety Zone; Atlantic Ocean, Key West, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a safety zone to be enforced in the event of hurricanes, tropical storms, and other disasters in the Florida Keys. This action is necessary to ensure the safety of the waters of the Key West Captain of the Port (COTP) zone Key West, FL. This proposed rulemaking would establish actions to be completed by industry and vessels in the COTP zone prior to landfall of hurricanes, tropical storms, and other disasters threatening the Florida Keys. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2023-0135 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LTJG Hailye Wilson, Sector Key West Waterways

Management Division, Coast Guard; telephone (305) 292-8768, email

Hailye.M.Wilson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The Florida Keys has the potential to be affected by hurricanes, tropical storms, and other disasters on a yearly basis, especially between the months of June and November. The Captain of the Port (COTP) Key West proposes establishing a safety zone to provide for the safety of life during such storms and events.

The purpose of this rulemaking is to protect mariners and port infrastructure during extreme weather and other natural disasters. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP Key West is proposing to establish a safety zone to be enforced in case of hurricanes, tropical storms, and other disasters in Florida Keys. This action is necessary to ensure the safety of the waters of the COTP Key West. This proposed rule would establish actions to be completed by local industry and vessels in the COTP zone prior to landfall of hurricanes, tropical storms, and other disasters threatening the Florida Keys. The proposed safety zone would consist of all waters of the territorial seas, in the Key West COTP zone, as prescribed in 33 CFR 3.35-40. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and

Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the necessity to protect life and port infrastructure during a hurricanes, tropical storms, and other disasters. The absence of a safe harbor in the Florida Keys precludes large vessels from accessing adequate facilities to weather a substantial storm or natural disaster within the COTP zone. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the safety zone, and the rule would allow vessels to seek permission to remain in port.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would

not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone that would prohibit entry in certain waters of the Key West COTP Zone for the duration needed to ensure safe transit of vessels and industry post-hurricane, post-storm, and post-emergency. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG- 2023-0135 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage.

Also, if you click on the Dockets tab and then the proposed rule, you should see a “Subscribe” option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T07-0135 to read as follows:

§ 165.T07-0135 Safety Zone; Hurricanes, Tropical Storms and Other Disasters in Florida Keys.

(a) *Regulated Areas.* All navigable waters within Sector Key West COTP zone, Key West, Florida, as described in 33 CFR 3.35-40, during specified conditions.

(b) *Definitions.*

(1) *Designated Representative* means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP Key West, in the enforcement of the regulated areas.

(2) *Port Condition WHISKEY* means a condition set by the COTP when weather advisories indicate sustained gale force winds (39-54 mph/34-47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 72 hours.

(3) *Port Condition X-RAY* means a condition set by the COTP when weather advisories indicate sustained gale force winds (39-54 mph/34-47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 48 hours.

(4) *Port Condition YANKEE* means a condition set by the COTP when weather advisories indicate that sustained gale force winds (39-54 mph/34-47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 24 hours.

(5) *Port Condition ZULU* means a condition set by the COTP when weather advisories indicate that sustained gale force winds (39-54 mph/34-47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 12 hours.

(c) *Regulations.*

(1) *Port Condition WHISKEY.* All vessel and port facilities must exercise due diligence in preparation for potential storm impacts. Ports and waterfront facilities must begin removing all debris and securing potential flying hazards. Oceangoing vessels 300 gross tons (GT) and above must make plans to depart no later than the setting of Port Condition Yankee unless authorized by the COTP. Vessels wishing to remain in port are required to submit an application to the COTP prior to setting Port Condition X-Ray.

(2) *Port Condition X-RAY.* All vessels and port facilities must ensure that

potential flying debris is removed or secured. Hazardous materials/pollution hazards must be secured in a safe manner and away from waterfront areas. Vessels over 300GT without an approval to remain in port must depart prior to the setting of Port Condition YANKEE. Vessels with the COTP's permission to remain in port must implement their pre-approved mooring arrangement. Terminal operators must prepare to terminate all cargo operations. The COTP may require additional precautions to ensure the safety of the ports and waterways.

(3) *Port Condition YANKEE*. Affected ports are closed to inbound vessel traffic. All oceangoing vessels greater than 300 Gross Tons must have departed designated ports within the Sector Key West COTP zone. Terminal operators must terminate all cargo operations not associated with storm preparations. Cargo operations associated with storm preparations include moving cargo within or off the port for securing purposes, port/facility equipment preparations, and similar activities, but do not include moving cargo onto the port or vessel loading/discharging operations unless specifically authorized by the COTP. All facilities must continue to operate in accordance with approved Facility Security Plans and comply with the requirements of the Maritime Transportation Security Act (MTSA).

(4) *Port Condition ZULU*. The port is closed to all vessel traffic except unless specifically authorized by the COTP. Cargo operations are suspended, including bunkering and lightering. Waivers may be granted unless Cargo of Particular Hazard or Certain Dangerous Cargo is involved.

(5) *Emergency Restrictions for Other Disasters*. Any natural or other disasters that are anticipated to affect the Sector Key West COTP zone will result in the prohibition of facility operations and vessel traffic transiting or remaining in the affected port.

(6) *Safety Zones Notice*. Coast Guard Sector Key West will attempt to notify the

maritime community of periods during which these safety zones will be in effect via Broadcast Notice to Mariners or by on-scene designated representatives.

(7) *Regulated Area Notice.* The Coast Guard will provide notice of the regulated area via Broadcast Notice to Mariners or by on-scene designated representatives.

(8) *Exception.* This regulation does not apply to authorized law enforcement agencies operating within the regulated area.

Dated: April 18, 2023.

Jason D. Ingram,
Captain, U.S. Coast Guard,
Captain of the Port Key West.

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